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Testimony IN OPPOSITION to HB 2391
Before the Senate Committee on Commerce
Submitted By: Rebecca Proctor
Executive Director, KOSE
March 31, 2015

Chairperson Lynn and Members of the Committee:

Thank you for allowing me to address you today. My name is Rebecca Proctor. I am a life-long Kansan, a labor and employee benefits attorney by trade, and currently serve as Executive Director for the Kansas Organization of State Employees (KOSE). KOSE is a public employee union representing over 8,000 executive branch employees in over 300 workplaces spread across all counties of our State. On behalf of those employees, I urge you to oppose HB 2391.

This bill was proposed to effectuate Human Resource "Modernizations" proposed by the Department of Administration. The proposed "modernizations" substantially alter the Kansas Civil Service Act by making it possible to fill nearly every position in the state service as an "unclassified" position. Doing so would be a very serious mistake.

WHY KANSAS HAS A CLASSIFIED SYSTEM

Before making changes to the Kansas Civil Service Act, it is important to understand the reasons why Kansas has a Civil Service Act. The current classified system is what is generally referred to as a "merit system." By definition, a merit system is a manner of hiring and promoting government employees that emphasizes their ability, education, experience and job performance rather than their connections or political affiliation.

The Kansas Civil Service System was made possible by a state constitutional amendment in 1940 that gave the Kansas Legislature the power to create a merit system. The Kansas Civil Service Act was subsequently passed in 1941.

So why are merit systems important? Because they are required to receive certain federal funds and participate in intergovernmental programs. Under various laws, including the Intergovernmental Personnel Act of 1970 (as amended), 42 USC 4728, 4763, certain Federal grant programs require, as a condition of eligibility, that State and local agencies receiving grants establish merit systems of personnel management for personnel who

administer the grant-aided programs. The merit systems are sometimes required by specific federal grant statutes and sometimes by regulations of the grantor agencies. Acceptable merit systems have six components:

1. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.
2. Providing equitable and adequate compensation.
3. Training employees, as needed, to assure high quality principles.
4. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.
5. Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or disability with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with Federal equal opportunity and nondiscrimination laws.
6. Assuring employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for purposes of interfering with or affecting the result of an election or nomination for office.

The State is required to maintain a certification by the Governor that the State has a system of personnel administration that complies with these standards and satisfies federal merit personnel requirements.

INTERGOVERNMENTAL PROGRAMS REQUIRING MERIT SYSTEMS

A partial list of programs with statutory requirements for merit systems include:

- Supplemental Nutrition Assistance Program (food stamps)
- Employment Security (unemployment insurance and employment services)
- Grants to states for old-age assistance
- Aid to families with dependent children
- Grants to states for aid to the blind
- Grants to states for aid to the permanently disabled
- Medicaid
- State and community programs on aging
- Federal payments for foster care and adoption

A partial list of programs with regulatory requirements for merit systems include:

- Occupational Safety and Health Standards
- Disaster Assistance and Emergency Relief

These programs are only examples. This is not a complete or exhaustive list of programs that would be impacted.

ELIMINATING MERIT PROTECTIONS HAS A FISCAL IMPACT

Normally, you would expect to find a breakdown of the programs that could be impacted by eliminating the merit system, and a dollar amount of the potential impact, on the bill's fiscal note. However, the fiscal note is completely silent on this issue. This omission is a clear and open indicator that the bill's impacts have not been thoroughly researched and its costs thoroughly analyzed.

Below is a partial list of grants (and their associated dollar amounts for Kansas) that could be lost if the merit system is dismantled.

- Kansas received approximately \$400 million in Supplemental Nutrition Assistance Program (SNAP) money in FY2015, which could be put in jeopardy if the state does not have a merit personnel administration system in accordance with Federal law.
 - See 7 CFR Section 272.4 http://www.ecfr.gov/cgi-bin/text-idx?SID=8d9d6abd6bef3c83960e6d5008387bd3&node=se7.4.272_14&rgn=div8
- Kansas received over \$1.5 billion in Medicaid funding which could be put in jeopardy if the state does not have a merit personnel administration system in accordance with Federal law.
 - See 5 CFR Section 900.605 <http://www.gpo.gov/fdsys/pkg/CFR-2012-title5-vol2/xml/CFR-2012-title5-vol2-part900-subpartF.xml>
- Kansas received over \$66 million in Children's Health Insurance money which could be put in jeopardy if the state does not have a merit personnel administration system in accordance with Federal law.
- The state could also place into jeopardy funds received for unemployment Insurance and employment services if the state does not have a merit personnel administration system in accordance with Federal law.
 - See 5 CFR Section 900.605 <http://www.gpo.gov/fdsys/pkg/CFR-2012-title5-vol2/xml/CFR-2012-title5-vol2-part900-subpartF.xml>

Our state is already facing significant budget problems. It is absolutely not prudent to put these funds at risk by removing the state's merit system of personnel management.

Some may claim this bill addresses that problem on page 4, in section 5. However, this section in no way, shape or form replaces or creates a merit system of personnel management. No matter what "agency policies" are put in place, an unclassified employee is an at-will employee. Period.

At-will employees can be fired at any time, for any reason (or for no reason at all). No matter what agency policy is maintained, an at-will employee is not a merit-covered employee. The two are mutually exclusive.

Also concerning: there has been no indication that agency heads even know the specific employees that must be covered by a merit system of personnel management to keep grant money. Various agencies have proposed taking this type of action before...and each time, the proposal has included no analysis of the potential loss of federal to state funds.

In fact, you only have to look back to 2011 to see the State has already been advised regarding the impacts of utilizing non-merit covered employees. I have attached to my testimony a letter sent to Senator Holland in 2011 by the Federal Department of Labor. This letter was sent in response to Kansas's then-Secretary of Labor Brownlee's proposal to make all Kansas Labor employees serve at the pleasure of the Secretary. On page 2, this letter states:

As noted above, the proposed amendment provides that KDOL employees would no longer be covered by the Civil Service provisions of state law. This raises an issue because the state law would no longer provide for "maintenance" of a merit system for individuals administering the UC and ES programs as required by section 303(a)(1), SSA, and 20 CFR 652.215. The fact that these employees would be explicitly removed from the state merit system and would serve "at the pleasure and discretion" of the secretary of labor is obviously inconsistent with the above Federal law requirements. While the amendment provides the Kansas Secretary of Labor shall consider merit principles identical to those found in Federal law in making personnel decisions, those cited principles are not mandatory, nor would state law under this amendment require that all the provisions of a merit system, including appeal rights for adverse actions, be afforded to employees of the KDOL. The proposed amendment therefore raise a conformity issue with Federal law requirements.

THE CLASSIFIED SYSTEM PROVIDES CONSISTENCY ACROSS AGENCIES

The purpose of the Kansas Civil Service Act reads as follows:

Purpose of act. *The general purpose of this act is to establish a system of personnel administration that meets the social, economic and program needs of the people of the state of Kansas as these needs now or in the future may be established. This system shall provide means to recruit, select, develop and maintain an effective and responsible work force and shall include policies and procedures for employee hiring and advancement, training and career development, job classification, salary administration, retirement, fringe benefits, discipline, discharge and other related activities. All personnel administration actions regarding employees in the state classified service shall be made without regard to race, national origin or ancestry, religion, political affiliation, or other nonmerit factors. Personnel administration actions shall be based on merit principles and fitness to perform the work required and shall provide fair and equal opportunity for public service.*

If you look at the Civil Service Act, it divides employees into two categories: classified and unclassified. The positions considered “unclassified” are specifically detailed in the Act. Unclassified positions are generally not rank and file positions. By contrast, the classified service “comprises all positions now existing or hereafter created which are not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness.” So, the various provisions of the Civil Service Act, some of which are included in the text of the bill, some of which are not, establish a system where the Department of Administration establishes classifications, salary ranges, and job descriptions for all individuals in the classified service. The result is consistency across the agencies for similar positions (for wages, duties, qualifications, etc). The same rules apply to all classified employees, regardless of agency, manager, etc.

Consistency in personnel management is important. It helps insure the State does not, inadvertently or otherwise, engage in illegal employment practices, such as hiring a woman and a man into the same job classification at drastically different salaries or have different terms of employment for individuals of different races or nationalities. It also helps insure the state can continue to conduct business when the person in the governor's office changes. Although those in leadership may change, the people doing the daily work of the state do not. Without the requirements of civil service, the entire state workforce could turn over with every gubernatorial election.

Without consistency in salaries, revenue-generating agencies with more money could offer substantially higher salaries for positions than other agencies, leading to some agencies experiencing a talent drain.

Dismantling a system designed to limit corruption and to insure the flow of intergovernmental grant funds is not something that should be done without substantial study and consideration. Both appear to be missing in this case.

These HR “modernizations” are not really modernizations at all. They put federal funds at risk and worsen the working conditions of state employees. On behalf of KOSE and the members it represents, I urge you to vote against HB 2391. I am happy to answer any questions you may have.

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



MAR 30 2011

The Honorable Tom Holland
Member of the Senate
of the State of Kansas
State Capitol Room 134-E
300 W 10th Street
Topeka, Kansas 66612

Dear Senator Holland:

We have reviewed a proposed amendment to Kansas House Bill 2135 that would amend Kansas law to provide that Kansas Department of Labor (KDOL) employees, including those who administer the unemployment compensation (UC) law, will no longer be covered under the state civil service system. This amendment raises a conformity issue with the requirement in Federal law that, as a condition for a state to receive UC administrative grants, state UC law provide for a merit system of personnel administration. A detailed discussion follows.

The proposed amendment provides for removal of KDOL employees from the state merit system by amending state law to provide:

- Sec. 6. (a) Notwithstanding any provision of law to the contrary, effective July 1, 2011:
- (1). K.S.A. 75-2901, et seq., and amendments thereto, as well as any rules and regulations deriving authority from or promulgated pursuant to K.S.A. 75-2901, et seq., and amendments thereto, shall not be applicable to officers and employees of the department of labor;
 - (2) all employees of the department of labor shall serve at the pleasure and discretion of the secretary of labor.

The amendment goes on to provide that the Secretary of Labor shall "consider" six merit principles that are identical to those found in regulations at 5 CFR 900.603 which apply to Federal merit systems.

~~K.S.A. 75-2901 et seq., is the provision in Kansas law which provides that state employees are covered by the civil service system. This amendment raises issues with several provisions of Federal law requiring that employees administering the state UC and employment service programs be covered under a merit system.~~

Section 303(a)(1) of the Social Security Act (SSA) requires, as a condition of a state receiving administrative grants for the operation of the UC program, that state law include provision for:

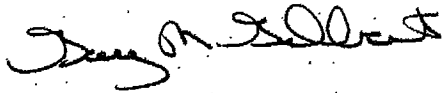
Such methods of administration (including after January 1, 1940, methods relating to **the establishment and maintenance of personnel standards on a merit basis**, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; [Emphasis added.]

Further, since the beginning of the employment service (ES), the U.S. Department of Labor (Department) has required, as a condition for receipt of Wagner-Peyser grants, that state employment services be administered by staff covered by a merit system of personnel administration. This is codified in regulation in 20 CFR 652.215, which requires that Wagner-Peyser Act services must be delivered by state agency employees covered by a merit system.

As noted above, the proposed amendment provides that KDOL employees would no longer be covered by the civil service provisions of state law. This raises an issue because the state law would no longer provide for "maintenance" of a merit system for individuals administering the UC and ES programs as required by section 303(a)(1), SSA, and 20 CFR 652.215. The fact that these employees would be explicitly removed from the state merit system and would serve "at the pleasure and discretion" of the secretary of labor is obviously inconsistent with the above Federal law requirements. While the amendment provides that the Kansas Secretary of Labor shall consider merit principles identical to those found in Federal law in making personnel decisions, those cited principles are not mandatory, nor would state law under this amendment require that all the provisions of a merit system, including appeal rights for adverse actions, be afforded to employees of the KDOL. The proposed amendment therefore would raise a conformity issue with Federal law requirements.

Please contact Suzanne Simonetta, Chief of the Division of Legislation, at (202) 693-3225 or simonetta.suzanne@dol.gov should you have questions regarding this letter.

Sincerely,



Gay M. Gilbert
Administrator

Office of Unemployment Insurance

cc Byron Zuidema
Regional Administrator
Chicago

Karin Brownlee
Secretary
Kansas Department of Labor